



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2010

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2010-06546

Dear Mr. Alicie:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 378373.

The Baytown Police Department (the "department") received four requests from the same requestor for three specified police reports involving a named individual, and for all domestic violence reports involving the named individual during a specified time period. You state you have released one of the requested reports. You state you will redact social security numbers from the requested documents.¹ You further state that you have no information responsive to one of the requests.² You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides as follows:

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

²The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the department or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). Upon review, we agree that report number 2005-20218 was used or developed in an investigation of alleged or suspected child abuse. *See id.*

§ 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Thus, report number 2005-20218 is generally confidential under section 261.201 of the Family Code. However, the requestor is the child victim who is the subject of the information at issue and is now at least 18 years of age. As you acknowledge, the department may not use section 261.201(a) to withhold this information from this requestor. *Id.* § 261.201(k). We note that section 261.201(l) provides that before a child can copy or inspect a record concerning that child under section 261.201(k), any personally identifiable information about another victim or witness under 18 years of age and the identity of the party who made the report must be redacted. *Id.* § 261.201(l)(1), (3). Accordingly, the department must withhold the identifying information of the child witness, which we have marked, from report number 2005-20218 under section 552.101 of the Government Code in conjunction with section 261.201(l)(1). Although you state “[t]he reportee’s identifying information is not listed in the report[,]” upon review, we are able to identify the individuals who reported the incident at issue to the department. Therefore, the department must withhold the reporting parties’ identifying information, which we have marked, under section 552.101 in conjunction with section 261.201(l)(3). Further, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may be withheld from disclosure. *Id.* § 261.201(l)(2). You assert portions of report number 2005-20218, as well as other submitted information, are excepted from disclosure under section 552.101 in conjunction with common-law privacy. Accordingly, we will consider your remaining argument against disclosure.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (information pertaining to illness from severe emotional and job-related stress protected by common-law privacy), 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). Generally, only highly intimate or embarrassing information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire incident report must be withheld to protect the individual’s privacy. In this instance, the requestor knows the identity of the individual involved, as well as the nature of the incident investigated in report number 2009-18832. Therefore, withholding only the subject

individual's identity or certain details of this incident from the requestor would not preserve the subject individual's common-law right of privacy. Therefore, the department must withhold report number 2009-18832 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Further, we agree the information you have marked in report number 2005-20218 is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department must withhold the information you have marked in report number 2005-20218 under section 552.101 and common-law privacy.

In summary, (1) the department must withhold the information we have marked in report number 2005-20218 under section 552.101 of the Government Code in conjunction with sections 261.201(1)(1) and 261.201(1)(3) of the Family Code; and (2) the department must withhold report number 2009-18832 in its entirety and the information you have marked in report number 2005-20218 under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released to the requestor.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 378373

Enc. Submitted documents

c: Requestor
(w/o enclosures)